IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 329 OF 2001.

1.Suresh Maruti Badgurav @ Pujari .... Appellant
(Orig.Accd.)

V/s

The State of Maharashtra ....Respondent.

Ms.Sharimila Kaushik (appointed) Adv. for the appellant.

Mrs. P.H. Kantharia, APP for the State.

CORAM: V.G. PALSHIKAR
AND
SMT.NISHITA MHATRE, JJ.

19th April, 2005.

Oral Judgment: (**Per Palshikar, J**)

1. Being aggrieved by the order of conviction and sentence passed by the Additional Sessions Judge, Kalyan in Sessions Case No.85 of 1999 on 29.11.2000 the appellant-accused has preferred this appeal on the grounds mentioned in the memo of appeal and also verbally canvassed before us.

2. With the assistance of the learned counsel for the appellants and the

learned Additional Public Prosecutor we have perused the entire evidence and reappreciated the same.

3. The prosecution story as it emerges from our reappreciation of evidence stated briefly is that on 26.3.1999 one Nirmalabai was admitted to the Central Hospital, Ulhasnagar for burn injuries. She had sustained severe burns. She was admitted to the hospital by a neighbour and gave her history as having been put on fire by her husband. Police were informed, Special Executive Magistrate was called and in the presence of doctor the Special Executive Magistrate recorded the dying declaration of the victim in which she indicated that she was put on fire by her husband the present appellant.

4. According First Information Report was lodged, the accused was arrested and investigation completed. The accused was charged for the offence punishable under section 302 of Indian Penal Code for murdering his wife by burning her. The prosecution examined as many as seven witnesses to prove its case and on appreciation of the entire evidence the learned trial Judge came to the conclusion of guilt, convicted the accused and sentenced him as mentioned above. It is this order of conviction and sentence which is impugned in this appeal by the accused who was duly represented by the learned advocate appointed for him by the State Government. With the assistance of the learned advocate we have reappreciated the evidence as aforesaid. P.W. 1 – Shaligram Sonawane is the Special Executive Magistrate who recorded the dying declaration. He has stated that he asked the Medical Officer on duty whether the patient was conscious and in a position to give statement. The Medical

Officer in the presence of the witness examined the patient and certified stating that the patient was in fit physical and mental condition to give statement. Thereafter the Magistrate recorded the statement of the victim and it was duly certified by the doctor as required by the Manual. He has proved it as Ex.13. This document bears the endorsement of the doctor certifying that the victim was in a position to state what she stated and was in mental and physical condition fit to do so. A perusal of Exh.13 shows that it was recorded in question and answer form. It carries all the necessary certificates and endorsements which are duly proved.

5. The prosecution has also examined the doctor who has certified the condition of the victim while recording the statement and has very clearly deposed that the victim was in a fit condition mental and physical to give the statement. He corroborates the Special Executive Magistrate who recorded the statement in material particulars.

6. It is also proved beyond doubt by the prosecution that the victim met with homicidal death. There is also evidence on record which cannot be impeached on reappreciation of evidence and consequently the prosecution has successfully proved that the accused did cause death of his wife as he was enraged by the doubt expressed by the wife. It has come on record that the accused was addicted to liquor and was quarreling with the wife often. There is nothing in the entire evidence on record which would require any disbelieving of any part of it. It was contended by the learned advocate on behalf of the accused that the accused has stated that after she was put on

fire she poured water on her body, extinguished the fire and went out of the house and complained of the assault. According to the learned advocate it goes to show that the burns were not severe and it cannot therefore be contended that the accused intended to commit murder of his wife. Though factually the wife has stated that she poured water on herself and complained of burning by husband to the neighbour who is also examined, it cannot be said or accepted that the accused did not know death as certainty of the consequences of putting a person on fire, without any further attempt to pacify the fire immediately. Merely because the woman was conscious enough to act fast and therefore delayed the death it cannot be said that the accused did not intend to commit murder of his wife. Taking into consideration the fact that the quarrels were usual affair, the learned trial Judge was right in convicting the accused to suffer imprisonment for life, treating as usual case of vendetta.

7. We, however, are inclined to accept the contention raised on behalf of the appellant that he is now an old man incapable of earing anything. There is nobody dependent upon him. The wife is dead. In such circumstances imposition of fine will not meet with any end of justice. The learned trial Judge has imposed a fine of Rs.10,000/- and in default as directed to suffer rigorous imprisonment for two years. In the peculiar circumstances of this case, we do not think that such imposition of fine and in default imprisonment for two years is warranted. In the result therefore the appeal fails. The conviction under section 302 of IPC is maintained and so is the sentence of imprisonment for life. We however set aside the sentence of fine and except for this clarification the entire order of the learned trial Judge is confirmed. Appeal stands

disposed off accordingly.